

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

SOURCECODE COMMUNICATIONS LLC,

Plaintiff,

– against –

IN-TELLIGENT LLC,

Defendant.

Case No. 21-10519

**VERIFIED COMPLAINT**

Plaintiff SourceCode Communications LLC (“SourceCode”), by and through its counsel, McGrail & Bensinger LLP, for its complaint against defendant In-telligent LLC (“In-telligent”), alleges as follows:

**NATURE OF ACTION**

1. This is a suit to collect a \$153,339 debt that In-telligent does not dispute it owes, yet will not pay, to SourceCode, for advice and services relating to communications, public relations, and marketing, performed and provided on behalf of and for the benefit of In-telligent. These services were performed pursuant to a PR Agency Client Agreement, dated September 29, 2020, between SourceCode and In-telligent (the “Agreement”). SourceCode has fully complied with its obligations under the Agreement and timely invoiced In-telligent. In-telligent has not disputed those invoices. Moreover, SourceCode has made numerous requests for payment, including a formal demand, and In-telligent has acknowledged repeatedly that the debt is due. Despite SourceCode’s repeated requests and In-telligent’s repeated assurances of forthcoming payment in response, In-telligent has failed to pay what it owes. SourceCode now sues In-telligent for payment of the undisputed balance.

### **PARTIES**

2. SourceCode is a domestic limited liability company organized under the laws of the State of New York, with its principal place of business located at 153 W. 27th Street, Suite 505, New York 10001.

3. On information and belief, In-telligent is a limited liability company organized under the laws of Illinois, and is registered with the Illinois Secretary of State, under file number 05457211, with its principal place of business located at 1 N. Upper Wacker Drive, Suite 3900, Chicago, Illinois 60606.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

5. Venue is proper in, and Defendant is subject to the personal jurisdiction of, this Court by the terms of the Agreement, to which Defendant is a party, and which underlies the claims brought in this case. The Agreement provides that “each party may bring a claim solely in the State or Federal courts located in New York County, in the State of New York. Each party hereby submits to the exclusive jurisdiction of such courts.” A true copy of the Agreement is attached hereto as Exhibit 1.

### **FACTS**

6. On September 29, 2020, SourceCode and In-telligent entered into the Agreement.

7. Pursuant to the Agreement, and as set forth in Addendum A thereto, SourceCode was obligated to provide advice and services relating to communications, public

relations, and marketing, performed and provided on behalf of and for the benefit of In-telligent.

8. Pursuant to Point II (3) of the Agreement, In-telligent was required to pay all invoices within ten days from the date of receipt.

9. SourceCode performed under the Agreement by providing advice and services relating to communications, public relations, and marketing to In-telligent (the “Services”), and it timely invoiced In-telligent in accordance with the terms of the Agreement.

10. In-telligent initially made partial payments on outstanding invoices due to SourceCode for the Services. A copy of SourceCode’s Statement of Account for In-telligent, dated November 30, 2021, is attached hereto as Exhibit 2.

11. Between January 1, 2021 and May 18, 2021, SourceCode continued to perform and timely invoice In-telligent in accordance with the terms of the Agreement. True copies of four invoices dated January 1, 2021 through May 1, 2021 (collectively, the “Invoices”) associated with those months are attached hereto as Exhibit 3.

12. In and around April 2021 through May 18, 2021, SourceCode made repeated requests to In-telligent for payment to reduce the balance due on its account. A true copy of the email correspondence documenting the requests, with attorney-client communication redacted, is attached hereto as Exhibit 4.

13. As of August 25, 2021, the sum of \$171,339 was due on the Account.

14. On or about August 25, 2021, In-telligent transferred \$18,000 to SourceCode as a partial payment, leaving a \$153,339 balance due (the “Unpaid Balance”).

15. In a string of email communications, a true copy of which, with attorney-client communication redacted, is attached hereto as Exhibit 5, the Founder, President, and Chief Executive Officer of In-telligent, Mr. Allan C. Sutherland, subsequently gave repeated assurances

to Mr. Seth Rosenstein, Chief Financial Officer of SourceCode, that In-telligent was making various efforts to pay, or obtain financing to pay, the entire balance owed to SourceCode, and repeatedly requested forbearance (emphases added):

- (a) On or about August 25, 2021, in response to a request for payment, Mr. Sutherland assured Mr. Rosenstein that he would continue efforts to “keep invoices as the payments come in *to get us all caught-up.*”
- (b) On or about September 1, 2021, in response to repeated requests for payment, Mr. Sutherland made further assurances to Mr. Rosenstein that upon receipt of funds he would “*make another payment.*”
- (c) On or about September 2, 2021, in response to a request for payment, Mr. Sutherland made further assurances to Mr. Rosenstein that upon receipt of funds he would “*send you money still (sic) today.*”
- (d) On or about September 9, 2021, in response to repeated requests for payment, Mr. Sutherland made further assurances to Mr. Rosenstein that “*payment will be made tomorrow at the latest.*”
- (e) On or about September 14, 2021, in response to repeated requests for payment, Mr. Sutherland emailed Mr. Rosenstein that he was making various efforts to obtain financing to pay its debt to SourceCode and stated “*I have a meeting later this morning with our capital/funding partners to understand why*

*your invoices (and the others) haven't been paid as promised."*

(f) On or about September 16, 2021, in response to a request for payment, Mr. Sutherland made further assurances to Mr. Rosenstein that *"next payment is looking like tomorrow or Monday at the latest."*

(g) On or about September 20, 2021, in response to repeated requests for payment, Mr. Sutherland emailed Mr. Rosenstein to explain that *"I believe that everything is set for a payment to you guys today...we have been told that the large financing that I mentioned weeks ago is now funding this week. As such, it (sic) all goes well, you guys will be fully paid off before the end of the week."*

(h) On or about September 23, 2021, in response to repeated requests for payment, Mr. Sutherland emailed Mr. Rosenstein to explain that *"we still need to get you and others paid. You have been incredibly patient, but you need money."*

(i) On or about October 4, 2021, in response to repeated requests for payment, Mr. Sutherland emailed Mr. Rosenstein to explain that: *"Fortunately, we have finally established a closing date on Wednesday for the contract with Cable & Wireless in Panama. As you will recall, this contract will pay us \$1,077,000 at closing. With these funds, we will get you guys all caught-up."*

16. On October 20, 2021, SourceCode's counsel sent a formal demand letter for

the Unpaid Balance to In-telligent. A true copy of the letter, together with confirmation of its delivery, is attached hereto as Exhibit 6.

17. On or about November 3, 2021, and as set forth in Exhibit 5, Mr. Sutherland emailed Mr. Rosenstein and Mr. Greg Mondschein, Co-founder and Managing Partner of SourceCode, to give further assurances of payment:

“[W]e will have more than enough money to bring our account current.

I know that you have heard this before.... I will send you another update each day next week until the money is wired to your account.

As I mentioned before, we have nothing but good things to say about the SourceCode team. I understand that you might not feel the same way about us, so will let you decide the next steps, if any, after the receivables are settled.”

18. Mr. Sutherland sent no daily updates and In-telligent never sent a wire in the amount of the Unpaid Balance.

19. As is evident from this correspondence, In-telligent gave repeated assurances to SourceCode that it was making various efforts to pay, or obtain financing to pay, its debt to SourceCode, repeatedly acknowledged its debt and requested forbearance from SourceCode, and at no point questioning the validity or accuracy of the Invoices or of the balance due to SourceCode.

20. Despite SourceCode’s repeated forbearance and repeated efforts to resolve the matter without resorting to litigation, In-telligent has persistently failed to pay the Unpaid Balance.

**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

21. SourceCode incorporates the substance of the prior paragraphs as though fully set forth herein.

22. In-telligent and SourceCode entered into the Agreement, under which SourceCode was obligated to provide the Services to In-telligent and In-telligent was obligated to pay SourceCode for the Services.

23. At all relevant times, the Agreement was and is valid and binding.

24. SourceCode duly performed all of its obligations under the Agreement.

25. In-telligent has failed to make payment for Services as rendered by SourceCode under the Agreement.

26. In-telligent thereby breached the Agreement.

27. In-telligent's breach has caused SourceCode damage in the amount of the Unpaid Balance—the aggregate of all the payments In-telligent failed to make under the Agreement, or \$153,339.00—plus interest from accrual at the contract rate: the highest rate allowable by law.

**SECOND CAUSE OF ACTION**

**(Account Stated)**

28. SourceCode incorporates the substance of the prior paragraphs as though fully set forth herein.

29. Pursuant to the Agreement, In-telligent received the entire benefit of the Services.

30. In-telligent retained each of the Invoices, and, to date, has not objected to

them either in part or in whole, and thus has not objected to the Invoices or questioned the Unpaid Balance within a reasonable time. In-telligent has acknowledged repeatedly that the Unpaid Balance was due and that In-telligent was obligated to pay that balance.

31. In-telligent made a partial payment of the debt due by transferring \$18,000.00 to SourceCode on August 25, 2021.

32. The Invoices that In-telligent thus retained and did not object to, and partially paid, establish an account stated in the amount of the Unpaid Balance.

33. As a result, In-telligent owes SourceCode the Unpaid Balance—or \$153,339.00—plus interest from accrual at the contract rate: the highest rate allowable by law.

### **THIRD CAUSE OF ACTION**

#### **(Quantum Meruit)**

34. SourceCode incorporates the substance of the prior paragraphs as though fully set forth herein.

35. In-telligent fully performed its part by providing the Services, expecting in good faith that In-telligent would fully perform its part, which included the payment of the Unpaid Balance.

36. In-telligent accepted SourceCode's provision of the Services.

37. The Unpaid Balance—\$153,339.00—represents the reasonable value of SourceCode's uncompensated Services.

38. In-telligent should therefore pay \$153,339.00—plus interest from accrual.

### **FOURTH CAUSE OF ACTION**

#### **(Unjust Enrichment)**

39. In-telligent incorporates the substance of the prior paragraphs as though

fully set forth herein.

40. In-telligent fully performed its part of the Agreement by providing the Services, expecting in good faith that In-telligent would fully perform its part, which included the payment of the Unpaid Balance.

41. By receiving and accepting the Services without paying the Unpaid Balance, In-telligent would be unjustly enriched.

42. It would be against equity and good conscience for In-telligent to retain the benefit of the Services without paying for them.

43. In-telligent should therefore pay SourceCode the Unpaid Balance—or \$153,339.00—plus interest from accrual.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, SourceCode Communications LLC, respectfully requests relief and judgment against Defendant, In-telligent LLC, as follows:

- A. As to the First Cause of Action, for Breach of Contract, an award of \$153,339.00, or such amount as is determined at trial, to be paid by In-telligent LLC to SourceCode Communications LLC as damages, plus pre-judgment interest at the contract rate—the highest rate allowable by law—and post-judgment interest at the statutory rate;
- B. As to the Second Cause of Action, on an Account Stated, an award of \$153,339.00, or such amount as is determined at trial, to be paid by In-telligent LLC to SourceCode Communications LLC in satisfaction of the stated and unpaid account, plus pre-judgment

interest at the contract rate—the highest rate allowable by law—and post-judgment interest at the statutory rate;

- C. As to the Third Cause of Action, for Quantum Meruit, an award of \$153,339.00, or such amount as is determined at trial, to be paid by In-telligent LLC to SourceCode Communications LLC as the reasonable value of all unpaid amounts, plus pre-judgment and post-judgment interest;
- D. As to the Fourth Cause of Action, for Unjust Enrichment, an award of \$153,339.00, or such amount as is determined at trial, to be paid by In-telligent LLC to SourceCode Communications LLC as the amount by which in-telligent has been unjustly enriched, plus pre-judgment and post-judgment interest;

Together with In-telligent's reimbursement for whatever fees, amounts and expenses, including attorneys' fees, SourceCode has incurred in the collection of the Invoices, from the time they became unpaid and overdue, as provided in the Agreement, and such other and

further relief in law or equity as the Court deems just and proper.

Dated: New York, New York  
December 8, 2021

McGAIL & BENSINGER LLP

By 

---

Daniel C. Malone

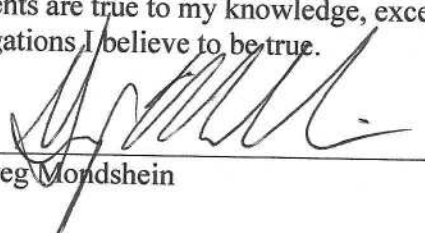
888-C Eighth Avenue, # 107  
New York, New York 10019  
Tel.: (646) 644-9548  
[dmalone@mcgrailbensinger.com](mailto:dmalone@mcgrailbensinger.com)

*Attorneys for plaintiff SourceCode  
Communications LLC*

**VERIFICATION**

I, Greg Mondshein, being duly sworn, depose and say:

I am the Chief Executive Officer of the plaintiff in the action captioned above, SourceCode Communications LLC I have read the foregoing complaint and am familiar with its contents and, in particular, its factual averments. Those factual averments are true to my knowledge, except matters alleged on information and belief, and those allegations I believe to be true.

  
Greg Mondshein

Sworn to before me this  
6<sup>th</sup> day of December, 2021.



NOTARY PUBLIC

DONALD GOLDSMITH  
Notary Public, State of New York  
No. 01GO5021034  
Qualified in Westchester County  
Commission Expires Dec. 6, 2021